

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LAZARO BANDA-GAXIOLA	)	Criminal No. 09-CR-1904-L
	)	Civil No. 11-CV-2421-L
Petitioner,	)	
v.	)	<b>ORDER DISMISSING WITH</b>
	)	<b>PREJUDICE PETITIONER'S</b>
UNITED STATES OF AMERICA,	)	<b>MOTION FOR REDUCTION OF</b>
	)	<b>SENTENCE UNDER 28 U.S.C. § 2255</b>
Respondent.	)	

On October 17, 2011, Petitioner Lazaro Banda-Gaxiola ("Petitioner") filed a Motion for Reduction of Sentence pursuant to 28 U.S.C. § 2255. Petitioner essentially requests that this Court grant a downward departure of up to two points due to Petitioner's immigration removal status. The Court has reviewed the record in this case, which clearly establishes that on May 31, 2011, Petitioner waived both his right to appeal and to collaterally attack his conviction and sentence. (Plea Agreement ¶ XI.) Petitioner's motion raises no challenge to the validity of that waiver, therefore this Court lacks jurisdiction to consider any collateral challenge to his conviction and sentence. *See Washington v. Lampert*, 422 F.3d 864, 869-70 (9th Cir. 2005) (recognizing that if sentencing agreement's waiver of the right to file a federal habeas petition was valid, district court lacked jurisdiction to hear the case).

///

1 Accordingly, Petitioner's Motion For Reduction of Sentence pursuant to 28 U.S.C. §  
2 2255 is **DISMISSED WITH PREJUDICE.**

3 **IT IS SO ORDERED.**

4 DATED: October 21, 2011

5   
6 M. James Lorenz  
United States District Court Judge

7  
8  
9  
10 COPIES TO:  
11 PETITIONER  
12 U.S. ATTORNEY'S OFFICE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28